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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 312

[Docket No.: 160615526-6526-01]

RIN 0610-AA68

Regional Innovation Program

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: Through this notice of proposed rulemaking (“NPRM”), the Economic Development Administration (“EDA” or “the Agency”), U.S. Department of Commerce (“DOC”), proposes and requests comments on the Agency’s implementation of the Regional Innovation Program as authorized by section 27 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (“Stevenson-Wydler” or the “Act”). Through the Regional Innovation Strategies Program (“RIS Program”), the centerpiece of the Regional Innovation Program, EDA currently awards grants for capacity-building programs that provide proof-of-concept and commercialization assistance to innovators and entrepreneurs and for operational support for organizations that provide essential early-stage funding to startup companies. This NPRM, for the first time, lays out the overarching regulatory framework for the Regional Innovation Program and specifically focuses on outlining the structure of the RIS Program.

DATES: Written comments on this NPRM must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments on the NPRM may be submitted through any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. EDA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

- Email: regulations@eda.gov. Include “Comments on EDA’s Regional Innovation Program regulations” and Docket No. 160615526-6526-01 in the subject line of the message.

- Fax: (202) 482-5671. Please indicate “Attention: Office of the Chief Counsel; Comments on EDA’s Regional Innovation Program regulations” and Docket No. 160615526-6526-01 on the cover page.

- Mail: Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite 72023, Washington, DC 20230. Please indicate “Comments on EDA’s Regional Innovation Program regulations” and Docket No. 160615526-6526-01 on the envelope.

All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Mara Quintero Campbell, Regional Counsel, Office of the Chief Counsel, Economic Development Administration, U.S.

Department of Commerce, 1401 Constitution Avenue NW., Suite 72023, Washington, DC 20230; telephone: (202) 482-9055.

SUPPLEMENTARY INFORMATION:

Background on Regional Innovation Program

History

In recent years, concerns about America’s global competitiveness led to calls for the Federal Government to more actively foster innovation and better coordinate Federal support for scientific and technological research and development, technology transfer, and commercialization. In particular, without Federal support, local communities struggled to effectively support the development of regional innovation clusters (defined below), which research has shown to be a significant catalyst of economic development. At the same time, regional innovation was hampered by limited access to the capital necessary to implement the innovative manufacturing technologies required to compete in the twenty-first century global economy.

In response to these concerns and with a desire to maintain America’s role as a leader in innovation, Congress enacted section 27 of Stevenson-Wydler (“section 27” or “Regional Innovation Program”) as part of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, Public Law 111-358 (Jan. 5, 2010) (“COMPETES Act”). As originally enacted by Congress, section 27 authorized the Secretary of Commerce (“Secretary”) to “establish a regional innovation program to encourage and support the development of regional innovation strategies, including regional innovation clusters and science and research parks.” In 2014, Congress enacted legislation that narrowed the

scope of the Regional Innovation Program. See Public Law No. 113-235 (Dec. 16, 2014). This legislative change is discussed more fully below. The Regional Innovation Program now encompasses two complementary sub-programs: the Regional Innovation Strategies Program (“RIS Program”) set forth in section 27(b) of the Act, and the Regional Innovation Research and Information Program (“RIRI Program”) set forth in section 27(c) of the Act.

Given EDA’s leadership in and support of innovation and entrepreneurship as key elements of a robust economy, the Secretary turned to EDA to develop and implement the Regional Innovation Program. Established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 et seq.) (“PWEDA”), EDA leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA makes investments to facilitate job creation for U.S. workers, increase private-sector investment, promote American innovation, and accelerate long-term sustainable economic growth. EDA’s regulations, codified at 13 CFR parts 300 through 315, provide the framework through which the Agency administers its economic development assistance programs.

Structure

Through the RIS Program (section 27(b) of Stevenson-Wydler), the core of the Regional Innovation Program, EDA competitively awards grants to eligible applicants for activities related to the formation and development of regional innovation clusters. 15 U.S.C. 3722(b). Stevenson-Wydler defines a regional innovation cluster as “a geographically bounded network of similar, synergistic, or complementary entities that—

(A) are engaged in or with a particular industry sector and its related sectors; (B) have active channels for business transactions and communication; (C) share specialized infrastructure, labor markets, and services; and (D) leverage the region's unique competitive strengths to stimulate innovation and create jobs.” 15 U.S.C. 3722(f)(1). The RIRI Program (section 27(c) of Stevenson-Wydler) is designed to formulate and disseminate best practices for regional innovation strategies, provide technical assistance for the development and implementation of regional innovation strategies, support the development of metrics to evaluate regional innovation strategies, collect and publicize data on regional innovation cluster activity in the United States, and fund competitive research grants to support the goals of the RIRI Program. This NPRM focuses on the RIS Program because EDA has not yet implemented the RIRI Program. However, these proposed regulations—and, in particular, the definition sections—are structured to incorporate the RIRI Program into a future subpart C of part 312 of title 13 of the Code of Federal Regulations once EDA implements the RIRI Program. In addition to awarding grants under the RIS and RIRI Programs, EDA anticipates at a future date conducting COMPETES Act prize competitions that support the goals and objectives of the Regional Innovation Program. See 15 U.S.C. 3719.

EDA's economic development assistance programs under PWEDA and the RIS Program seek to increase economic growth and resilience, enhance prosperity, and improve quality of life, but they approach the goal from different angles, as reflected in the enabling statutes and regulations. For example, the focus of PWEDA's core programs is increasing employment and private investment in economically distressed regions. Funding generally is limited to regions that meet chronic high unemployment or low per

capita income criteria, and grant rates increase with the level of economic distress up to a maximum of 100 percent in limited circumstances. Conversely, the RIS Program focuses on encouraging scientific and technological innovation and collaboration; it thus provides funding to a broader range of entities and does not require applicants to demonstrate economic distress. Moreover, it also is capped at a 50 percent grant rate.

Implementation

EDA publicly launched the RIS Program in September 2014 when it announced the first round of competitions for funding under the Program. The announcement of a Federal Funding Opportunity (“FFO”) identified three separate competitions for a total of \$15 million in Federal funding: the i6 Challenge, Science and Research Park Development Grants, and Seed Fund Support (“SFS”) Grants (formerly known as Cluster Grants for Seed Capital Funds). The i6 Challenge, first launched in 2010 as part of the multi-agency Startup America Initiative, is designed to support the creation of programs for innovation and entrepreneurship—specifically, the development, creation, or expansion of proof-of-concept and commercialization programs that increase the development of innovations, ideas, intellectual property, and research into viable companies. Science and Research Park Development Grants supported feasibility and planning studies to create innovation hubs for driving the results of applied research and development to the commercial marketplace by supporting the entire product or process lifecycle from idea generation to business creation.

SFS Grants support activities related to the feasibility, planning, formation, launch, or expansion of cluster-based seed capital funds to assist innovation-based startups with high growth potential. After considering more than 240 applications, in

early 2015, EDA awarded 17 i6 Grants, 12 Science and Research Park Development Grants, and 9 SFS Grants to applicants throughout EDA's six regions.

In 2014, Congress amended the Regional Innovation Program in section 705 of the Revitalize American Manufacturing and Innovation Act of 2014, Public Law No. 113-235 (Dec. 16, 2014) ("RAMI"). Under RAMI, Congress eliminated the provisions authorizing Science and Research Park Development Grants and Loan Guarantees for Science Park Infrastructure but did maintain eligibility for such parks to apply for RIS awards. Accordingly, when EDA announced a second round of RIS Program competitions in August 2015, it included \$10 million in Federal funding for i6 Challenge Grants and SFS Grants, and no longer had a separate Science and Research Park Development Grant competition. In addition, consistent with changes made by Congress in RAMI to section 27(b)(7) of the Act, EDA implemented a targeted outreach program to ensure that public and private sector entities in rural communities were aware of the opportunity. After considering 168 applications for funding, EDA awarded 17 i6 Grants and 8 SFS Grants in early 2016.

A third round of competitions for \$15 million in funding for i6 Challenge Grants and SFS Grants was announced in April 2016.

With EDA's RIS funding, successful applicants have undertaken transformative projects such as the development of a hardware entrepreneurship ecosystem, expansion of a seed capital fund focused on commercializing water technology, and investigation of the feasibility of constructing a test track for connected and autonomous vehicles. Grant recipients are required to provide semi-annual reports, using EDA-developed metrics that are consistent across grantees, that EDA uses to evaluate the impact of the RIS Program.

Administration

Administration and management of the Regional Innovation Program is an EDA-wide responsibility. The Regional Innovation Program (including the RIS Program) is broadly overseen by the Office of Innovation and Entrepreneurship (“OIE”), which was established by the Secretary pursuant to section 25(c) of the Act. Housed within EDA, OIE works to foster a more innovative U.S. economy focused on turning new ideas and inventions into products and technologies that spur job growth and competitiveness while promoting economic development through innovation and entrepreneurship. In addition, EDA’s Deputy Assistant Secretary for Regional Affairs has served as the Grants Officer for RIS Program awards, with day-to-day administration of these awards being handled by the Agency’s regional offices.

Because of significant differences in EDA’s authority under PWEDA and Stevenson-Wydler, EDA is proposing regulations specific to the Regional Innovation Program. This NPRM focuses on the RIS Program, the only portion of the Regional Innovation Program currently being implemented in these proposed regulations. The basic regulatory framework proposed for this program is summarized below.

Section-by-Section Analysis

Section 312.1 – Purpose and Scope of the Regional Innovation Program

This section sets forth the general purpose of the Regional Innovation Program and provides a brief description of its two sub-programs (i.e., RIS and RIRI Programs). 15 U.S.C. 3722(b), (c). Section 312.1 also informs the public that the Secretary has delegated to EDA the authority to implement and administer the Regional Innovation Program.

Section 312.2 – General Definitions from Public Works and Economic Development Act Regulations Inapplicable to this Part

This section establishes that the definitions of § 300.3 of chapter III are not applicable to the Regional Innovation Program. Section 300.3 defines terms related to EDA's administration of grant programs authorized by PWEDA. The Regional Innovation Program was established by Stevenson-Wydler, with distinct programmatic and eligibility criteria. Therefore, EDA proposes to include an umbrella Regional Innovation Program definition section that applies to all of part 312 and a separate definition section that applies only to the RIS Program, as described in §§ 312.3 and 312.5 respectively, below.

Section 312.3 – General Definitions

This section defines terms applicable to the Regional Innovation Program. The definitions are applicable to the RIS Program as well as the RIRI Program.

Section 312.3 includes terms defined in the Act relevant to the Regional Innovation Program such as Eligible recipient, Federal agency, Federal laboratory, Regional innovation clusters, Secretary, and State.

This section also includes terms that EDA has previously defined and regularly uses in all of its grant programs, such as In-kind contribution(s) and Recipient. Many of these terms have been adopted almost verbatim from the PWEDA definitions at §§ 300.3 and 314.1 of chapter III; however, the terms FFO, Grant, Investment rate, Project, Real

property, and Region have been slightly modified to reference Stevenson-Wydler as opposed to PWEDA, or to increase readability.

EDA also proposes to adopt the commonly used definitions for the terms Equipment, Federal interest, and Nonprofit organization from the Federal Uniform Administrative Requirements and Cost Principles as set out in 2 CFR part 200 (“Uniform Guidance”). See 200 CFR 200.33, 200.41, and 200.70.

In addition, EDA establishes new definitions for the terms Economic Development Organization, Public-private partnership, and Science or research park because they are Eligible recipients under the RIS program. See 15 U.S.C. 3722(b)(3). Finally, EDA also establishes new definitions for Regional Innovation Program, RIS Program, and RIRI Program.

Section 312.4 – Purpose and Scope of the Regional Innovation Strategies Program

This section sets forth the general purpose and scope of the RIS Program as identified in section 27(b) of the Act. 15 U.S.C. 3722(b). Under the RIS Program, EDA will award competitive grants to eligible applicants that build public and private capacity to invent, improve, and commercialize new products and services with the goal of promoting economic growth in the United States.

Section 312.5 – Regional Innovation Strategies Program Definitions

This section sets forth the definition of Institution of higher education (“IHE”), a term that has a meaning unique to the RIS Program. Under the Act, both for-profit and nonprofit IHEs are eligible recipients under the RIS Program. 15 U.S.C. 3722(b)(3)(D). See analysis of § 312.6, below. This means that the RIS Program cannot use the standard definition of IHE promulgated by the U.S. Department of Education (“ED”) in 20 U.S.C.

1001 and adopted in the Uniform Guidance at 2 CFR 200.55 because that definition includes conditions that the IHE be “public” or “nonprofit.” However, since the ED definition is the standard Government-wide definition, EDA proposes to incorporate as much of the ED definition as possible while omitting language related to “public” or “nonprofit” that conflicts with section 27(b) of the Act. Thus, in EDA’s definition of IHE in § 312.5, EDA has duplicated 20 U.S.C. 1001 but with the following deletions: (1) paragraph (4) of 20 U.S.C. 1001(a) that requires an IHE to be “a public or other nonprofit institution”; (2) a cross-reference to paragraph (4) of 20 U.S.C. 1001(a) that appeared in 20 U.S.C. 1001(b)(1); and (3) the reference in 20 U.S.C. 1001(b)(2) to “public or nonprofit private”.

Section 312.6 – Eligible Recipients

This section identifies those entities eligible to apply for and potentially receive funding under the RIS Program. The list is derived from the definition of “Eligible recipient” in section 27(b)(3) with one proposed clarification. Paragraph (D) of section 27(b)(3) of the Act lists and groups together several types of entities. 15 U.S.C. 3722(b)(3)(D). EDA proposes to separate nonprofit organizations from the other entities to provide needed clarity. Section 27(b)(3)(D)(i) permits grants to for-profit as well as nonprofit institutions of higher education, public-private partnerships, science or research parks, Federal laboratories, and economic development organizations or similar entities. Congress established “nonprofit organizations” as a separate type of entity eligible for an RIS award and did not include the term “nonprofit” as a modifier on the other types of entities that are eligible recipients. Grouping together all of these various types of entities could lead to confusion that “nonprofit” applies to institutions of higher education,

public-private partnerships, science or research parks, federal laboratories, and economic development organizations or similar entities, when it does not.

Both nonprofit organizations and the other entities listed in section 27(b)(3)(D) must still meet the additional eligibility requirement in section 27(b)(3)(D)(ii) of demonstrating that a State or a political subdivision of a State supports the application.

Consistent with section 27(b), individuals are not eligible recipients.

Section 312.7 – Eligible Project Activities

This section identifies the project activities that are eligible for potential funding under the RIS Program. The list is derived from section 27(b)(2) with proposed modifications to include three additional eligible activities and four activities that EDA proposes should be ineligible. 15 U.S.C. 3722(b)(2). The list of eligible activities provided by Congress is non-exhaustive because section 27(b)(2) expressly allows discretion for the Secretary to determine appropriate RIS Program activities. EDA therefore has added a catchall to the end of the list of eligible activities that provides “(11) Any other activity determined appropriate by the Assistant Secretary.” To that list, EDA also proposes to add two further activities, “(9) Purchase of equipment, but only to the extent that such equipment is used to support another eligible activity as described in this section (the recipient may be required to secure and record the Federal interest in the equipment)” and “(10) Modifications or renovations of a facility that are necessary to install equipment.”

With respect to (9) above, at times new innovations require the use of technologies, such as a three-dimensional printer, not readily available to an applicant. As such, EDA proposes to permit the purchase of equipment in limited circumstances.

However, because EDA does not believe Congress intended for the RIS Program to primarily fund equipment, EDA proposes to confine the purchase of equipment to only those purchases that are otherwise used to support another eligible project activity described in § 312.7. To protect the Federal interest in such equipment, EDA may require eligible recipients that purchase equipment to provide EDA with a security interest in the equipment that is perfected and placed of record consistent with applicable law (for example, through the execution of a Uniform Commercial Code Financing Statement (UCC-1) or other statement acceptable in form and substance to EDA).

As a natural extension of including the purchase of equipment as an eligible project activity in § 312.7(a)(9), there are situations when installing the equipment may require some minor modifications or renovations to a facility and this proposed rule makes those activities eligible as well in § 312.7(a)(10).

On the other hand, EDA proposes to make expenses related to construction (other than minor modifications or renovations of a facility needed to install equipment) and acquisition or improvement of real property ineligible activities. While EDA acknowledges that at times constructing a new facility and/or purchasing real property may support the development of regional innovation clusters, EDA does not believe those specific activities are within the core purposes of the RIS Program as defined by Congress. It is clear that Congress's intent for the RIS Program is to promote actual innovation, not the facilities or places where such activities may take place. There are other grant programs throughout the Federal Government that fund these activities (e.g., PWEDA). Further, as a practical matter, the costs associated with construction and real property acquisition or improvements are more substantial than the other types of eligible

activities identified in § 312.7 and consequently, permitting such activities would diminish EDA's ability to award as many grants as possible with its limited appropriations.

EDA also proposes to make ineligible the use of RIS Program or matching share funds for equity investments. RIS Program awards have supported the creation of mechanisms for attracting, gathering, and deploying investment capital within regional innovation clusters that fill regional gaps in funding for early-stage companies, but RIS Program funds cannot be used to make those investments themselves. Further, there are other grant programs throughout the Federal Government that fund these activities such as the Small Business Administration's Small Business Investment Company program.

Finally, EDA proposes that lending programs such as providing direct loans or capitalizing a revolving loan fund be ineligible. Providing loans, or permitting grant funds to support lending programs, requires specific Congressional authorization that is not provided in section 27 of the Act.

Section 312.8 – Investment Rates

This section identifies that the maximum grant rate permitted under section 27(b)(6) of the Act is 50 percent and states that there is no minimum grant rate. 15 U.S.C. 3722(b)(6). The grant rate here represents the percentage of the total Project cost that can be funded with EDA funds.

Section 312.9 – Matching Share Requirements

This section clarifies that an applicant's matching share requirements may be met by either cash or in-kind contribution(s). Matching share is the difference between the amount of the EDA investment permitted by the Act (see § 312.8), and the total eligible

costs of a proposed project. Consistent with EDA's regulations for programs authorized by PWEDA at 13 CFR 301.5, this proposed rule requires an applicant to demonstrate, at the time of application, that matching share is committed to the project, will be available as needed, and is not or will not be conditioned in any way that would conflict with the requirements of the RIS Program.

EDA expressly retains discretion to determine whether the matching share is adequately documented to ensure that awards comply with the statutorily-established maximum investment rate. Applicants must comply with their own rules (as established in statutes, ordinances, bylaws, or the like) for appropriating or committing organizational funds; in many cases, these rules authorize the organization's governing body (rather than an individual executive) to approve proposed expenditures of cash but permit executives to commit in-kind personnel time based on their authority to manage employees and their workload. Applicants should consult their governance documents for guidance.

Section 312.10 – Application Components

This section sets forth the minimum information that applicants must provide to EDA to be considered for an RIS Program award, as outlined in section 27(b)(4)(B). 15 U.S.C. 3722(b)(4)(B). This includes information necessary for EDA to identify how the proposed activity will support an existing, or further develop an emerging, regional innovation cluster; how much outside support the cluster will receive; the methodology the applicant will use to get other entities to participate in and benefit from the cluster; the extent to which the cluster will stimulate innovation and positively affect the region's economy; the capacity for applicants to access or contribute to a well-trained workforce;

the ability of the recipient to attract additional funds; and the sustainability of the activity. To ensure that requirements remain current, EDA will specify application procedures and materials (such as required standard Federal forms) in each FFO for the RIS Program.

Section 312.11 – Application Evaluation and Selection Criteria

This section provides notice that EDA will evaluate and select complete applications based on the priorities and requirements set forth in section 27(b), the evaluation criteria and funding priorities identified in the FFO announcement, available funds, competitiveness of the application, and compliance with any other applicable Federal statutes and regulations. EDA proposes this flexible structure to ensure that the agency complies with required statutory elements such as “special considerations” for certain applicants “from regions that contain communities negatively impacted by trade” or who agree “to collaborate with local workforce investment area boards” and at the same time follows Congressional directives outlined in EDA’s annual appropriation and supports Administration priorities. 15 U.S.C. 3722(b)(4)(C), (b)(5); see, e.g., H.R. Rep. 114-130 at 7 (May 27, 2015).

The section also sets forth that EDA will notify applicants as soon as practicable regarding whether their applications are selected for funding and provides notice that there is no appeal process for denied applications.

Section 312.12 – General Terms and Conditions for Investment Assistance

This section expressly provides that most of the general terms and conditions found in part 302 of title 13 of the Code of Federal Regulations apply to the RIS Program. These terms and conditions either apply Government-wide as mandated by statute or regulation, or are EDA-specific requirements and typically apply to all EDA

grant programs, such as those authorized by PWEDA. EDA proposes to exclude those specific paragraphs of part 302 that are irrelevant to the RIS or RIRI Programs, or are unique to PWEDA. The excluded requirements are those related to “Procedures in disaster areas” (§ 302.2); “Project servicing for loans, loan guaranties and Investment Assistance” (§ 302.3); “Inter-governmental review of projects” (§ 302.9); and “Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction” (§ 302.10).

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts. 5 U.S.C. 553(a)(2). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Orders No. 12866 and 13563

This proposed rule was drafted in accordance with Executive Orders 12866 and 13563. It was reviewed by the Office of Management and Budget (“OMB”), which found that the proposed rule will be a “significant regulatory action” as defined by Executive Orders 12866 and 13563.

Congressional Review Act

This proposed rule is not major under the Congressional Review Act (5 U.S.C. 801 et seq.).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” It has been determined that this proposed rule does not contain policies that have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (“PRA”) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number. It has been determined that the PRA does not apply to the proposed rule because the rule does not collect any new information requiring OMB approval. The proposed rule will use the previously approved Standard Form 424 family of forms to collect information relevant to the grant applications.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this proposed rule. These collections of information are necessary for the proper performance and functions of EDA.

| Part or section of this proposed rule | Nature of Request | Form/Title/OMB Control Number |
|---------------------------------------|---|--|
| 312.10 | All Eligible Applicants must submit required application materials using the Standard Form 424 family of forms. | SF-424 (4040-0004), SF-424A (4040-0006), SF-424B (4040-0007) |

List of Subjects in 13 CFR Part 312

Application requirements, Cluster grants, Financial assistance, Regional innovation, Regional innovation clusters, Regional Innovation Program, Regional Innovation Research and Information Program, Regional Innovation Strategies Program, Research.

Regulatory Text

For the reasons set forth in the preamble, EDA proposes to amend title 13, chapter III of the Code of Federal Regulations by adding part 312 to read as follows:

PART 312--REGIONAL INNOVATION PROGRAM

Subpart A – General Provisions

Sec.

312.1 Purpose and scope of the Regional Innovation Program.

312.2 General definitions from Public Works and Economic Development Act regulations inapplicable to this part.

312.3 General definitions.

Subpart B – Regional Innovation Strategies Program

312.4 Purpose and scope of the Regional Innovation Strategies Program.

312.5 Regional Innovation Strategies Program definitions.

312.6 Eligible recipients.

312.7 Eligible project activities.

312.8 Investment rates.

312.9 Matching share requirements.

312.10 Application components.

312.11 Application evaluation and selection criteria.

312.12 General terms and conditions for investment assistance.

Subpart C – Regional Innovation Research and Information Program

312.13 through 312.17 [Reserved]

Authority: 15 U.S.C. 3701 et seq.; Department of Commerce Organization Order 10–4.

Subpart A – General Provisions.

§ 312.1 Purpose and scope of the Regional Innovation Program.

The purpose of the Regional Innovation Program is to encourage and support the development of regional innovation strategies. The Regional Innovation Program includes two sub-programs. One is focused on the formation and development of regional innovation clusters and implemented through the Regional Innovation Strategies Program. 15 U.S.C. 3722(b). The second program is focused on best practices, metrics and the collection and dissemination of information related to regional innovation strategies, achieved through the Regional Innovation Research and Information Program. 15 U.S.C. 3722(c). The Secretary has delegated to the Economic Development Administration the authority to implement and administer the Regional Innovation Program.

§ 312.2 General definitions from Public Works and Economic Development Act regulations inapplicable to this part.

The definitions contained in § 300.3 of this chapter do not apply to this part.

§ 312.3 General definitions.

As used in this part, the following terms shall have the following meanings:

Act or Stevenson-Wydler means the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 et seq.).

Assistant Secretary means the Assistant Secretary of Commerce for Economic Development within the Department.

Department of Commerce, Department, or DOC means the U.S. Department of Commerce.

Economic Development Organization means an organization whose primary purpose is to support the economic development of a community or region.

EDA means the Economic Development Administration within the Department.

Eligible applicant means an entity qualified to be an eligible recipient or its authorized representative.

Eligible recipient means a recipient that meets the requirements of § 312.6.

Equipment is defined at 2 CFR 200.33.

Federal agency means any executive agency as defined in 5 U.S.C. 105, and the military departments as defined in 5 U.S.C. 102, as well as any agency of the legislative branch of the Federal Government.

Federal funding opportunity or FFO means an announcement that EDA publishes during the fiscal year on a Federal Government grants platform or on EDA's Internet Web site at <http://www.eda.gov>, <https://www.eda.gov/oie/>, or any successor Web site, that provides the funding amounts, application and programmatic requirements, funding priorities, special circumstances, and other information concerning a specific competitive solicitation under EDA's Regional Innovation Program.

Federal interest is defined at 2 CFR 200.41, in accordance with 2 CFR 200.316.

Federal laboratory means any laboratory, any federally funded research and development center, or any center established under section 7 or section 9 of the Act that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the government or by a contractor.

Grant means the financial assistance award of EDA funds to an eligible recipient, under which the Eligible Recipient bears responsibility for meeting a purpose or carrying out an activity authorized under Stevenson-Wydler. See 31 U.S.C. 6304.

In-kind contribution(s) means non-cash contributions, which may include contributions of space, Equipment, services, and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable Federal Uniform Administrative Requirements and Cost Principles as set out in 2 CFR part 200.

Indian tribe means an entity on the list of recognized tribes published pursuant to the Federally Recognized Indian Tribe List Act of 1994, as amended (Pub. L. 103-454) (25 U.S.C. 479a et seq.), and any Alaska Native village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)). This term includes the governing body of an Indian tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit Indian tribal organization or entity; provided that the Indian tribal organization or entity is wholly owned by, and established for the benefit of, the Indian tribe or Alaska Native village.

Investment or Investment assistance means a grant entered into by EDA and a recipient.

Investment rate means, as set forth in § 312.8 of this part, the amount of the EDA investment in a particular project expressed as a percentage of the total project cost.

Matching share or Local share means the non-EDA funds and any in-kind contribution(s) that are approved by EDA and provided by a recipient or third party as a condition of an investment. The matching share may include funds from another Federal agency only if authorized by a statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority.

Nonprofit organization is defined at 2 CFR 200.70.

Office of Innovation and Entrepreneurship or OIE means the office established by 15 U.S.C. 3720.

Project means the proposed or authorized activity (or activities), the purpose of which fulfills EDA's mission and program requirements as set forth in the Act and this part, and which may be funded in whole or in part by EDA investment assistance.

Public-private partnership means a relationship formalized by contractual agreement between a public agency and a private-sector entity that reasonably defines the terms of collaboration in the delivery and financing of a public project.

Real property means any land, whether raw or improved, and includes structures, fixtures, appurtenances, and other permanent improvements, excluding moveable machinery and equipment.

Recipient means an entity receiving EDA investment assistance, including any successor to the entity approved by EDA in writing. If investment assistance is awarded to more than one recipient under a single award, the recipients are referred to as "co-recipients" and, unless otherwise provided in the terms and conditions of the investment

assistance, each co-recipient is jointly and severally liable for fulfilling the terms of the investment assistance.

Region or Regional means an economic unit of human, natural, technological, capital, or other resources, defined geographically. Geographic areas comprising a region need not be contiguous or defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development.

Regional innovation clusters or RICs means a geographically bounded network of similar, synergistic, or complementary entities that are engaged in or with a particular industry sector and its related sectors; have active channels for business transactions and communication; share specialized infrastructure, labor markets, and services; and leverage the region's unique competitive strengths to stimulate innovation and create jobs.

Regional Innovation Program means the program enacted by Stevenson-Wydler at 15 U.S.C. 3722.

Regional Innovation Research and Information Program or RIRI Program means the program authorized by 15 U.S.C. 3722(c).

Regional Innovation Strategies Program or RIS Program means the cluster grant program authorized by 15 U.S.C. 3722(b).

Science or research park means a property-based venture that has: master-planned property and buildings designed primarily for private-public research and development activities, high technology and science-based companies, and research and development support services; a contractual or operational relationship with one or more science- or research-related institutions of higher education or governmental or nonprofit research

laboratories; a primary mission to promote research and development through industry partnerships, assisting in the growth of new ventures and promoting innovation-driven economic development; a role in facilitating the transfer of technology and business skills between researchers and industry teams; and a role in promoting technology-led economic development for the community or region in which the park is located.

Secretary means the Secretary of Commerce.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

United States means all of the States.

Subpart B – Regional Innovation Strategies Program

§ 312.4 Purpose and scope of the Regional Innovation Strategies Program.

Under the RIS Program, EDA makes grants on a competitive basis to eligible applicants to foster connected, innovation-centric economic regions that support commercialization and entrepreneurship. The grants are intended to build public and private capacity to invent and improve products and services and to bring those products and services to market through a process often referred to as technology commercialization, as demonstrated by methodologically sound metrics for output and outcome.

§ 312.5 Regional Innovation Strategies Program definitions.

In addition to the defined terms set forth in subpart A, the following term applies specifically to the RIS Program:

Institution of higher education means:

(1) An educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of 20 U.S.C. 1091(d);

(ii) Is legally authorized within such State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of Education; and

(iv) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(2) Additional institutions included. For purposes of this subpart, the term Institution of higher education also includes—

(i) Any school that provides not less than a 1-year program of training to

prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1)(i), (ii), and (iv) of this definition; and

(ii) An educational institution in any State that, in lieu of the requirement in paragraph (1)(i) of this definition, admits as regular students individuals—

(A) Who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) Who will be dually or concurrently enrolled in the institution and a secondary school.

§ 312.6 Eligible recipients.

A recipient eligible for investment assistance includes:

(a) A State;

(b) An Indian tribe;

(c) A city or other political subdivision of a State;

(d) An entity that is a nonprofit organization and whose application for funding under the RIS Program is supported by a State or a political subdivision of a State;

(e) An entity that is an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, or an economic development organization or similar entity, and whose application for funding under the RIS Program is supported by a State or a political subdivision of a State; or

(f) A consortium of any of the entities described in paragraphs (a) through (e) of this section.

§ 312.7 Eligible project activities.

(a) Activities eligible for a RIS Program grant include:

- (1) Feasibility studies;
- (2) Planning activities;
- (3) Technical assistance;
- (4) Developing or strengthening communication and collaboration

between and among participants of a regional innovation cluster;

(5) Attracting additional participants to a regional innovation cluster;

(6) Facilitating market development of products and services of a regional innovation cluster, including through demonstration, deployment, technology transfer, and commercialization activities;

(7) Developing relationships between a regional innovation cluster and entities or clusters in other regions;

(8) Interacting with the public and State and local governments to meet the goals of the regional innovation cluster;

(9) Purchase of equipment, but only to the extent that such equipment is used to support another eligible activity as described in this section (the recipient may be required to secure and record the Federal interest in the equipment);

(10) Modifications or renovations of a facility that are necessary to install equipment; and

(11) Any other activity determined appropriate by the Assistant Secretary.

(b) An ineligible activity includes, but is not limited to:

- (1) Use of Federal funds or matching share for equity investments;

- (2) Acquisition or improvement of real property;
- (3) Construction except to the extent provided in paragraph (a)(10) of this section; and
- (4) Lending programs, such as a direct loan program or capitalizing a revolving loan fund.

§ 312.8 Investment rates.

- (a) Minimum investment rate. There is no minimum investment rate for a project.
- (b) Maximum investment rate. The maximum investment rate for a project shall not exceed 50 percent.

§ 312.9 Matching share requirements.

The required matching share of a project's eligible costs may consist of cash or in-kind contribution(s) whose value can be readily determined, verified, and justified. Applicants must show at the time of application that the matching share is committed to the project, will be available as needed, and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the investment assistance. EDA shall determine at its sole discretion whether the matching share documentation adequately addresses the requirements of this section.

§ 312.10 Application components.

In addition to the criteria set forth in the FFO, to be considered for a RIS Program grant, eligible applicants must provide the following information:

- (a) A description of the regional innovation cluster supported by the proposed activity;
- (b) The extent to which the regional innovation cluster is supported by the private sector, State and local units of government, and other relevant stakeholders;
- (c) The methods that participants in the regional innovation cluster will use to encourage and solicit participation by all types of entities that might benefit from participation, including newly formed entities and rival existing participants;
- (d) The extent to which the regional innovation cluster is likely to stimulate innovation and have a positive effect on regional economic growth and development;
- (e) The capacity of participants in the regional innovation cluster to access, or contribute to, a well-trained workforce;
- (f) The ability of participants in the regional innovation cluster to attract additional funds to support the cluster with non-Federal funds; and
- (g) The likelihood that participants in the regional innovation cluster will be able to sustain activities after the grant expires.

§ 312.11 Application evaluation and selection criteria.

(a) EDA will evaluate and select complete applications in accordance with the evaluation criteria, funding priority considerations, availability of funding, competitiveness of the application, and requirements set forth in section 27(b) of Stevenson-Wydler, the FFO, and other applicable Federal statutes and regulations. All awards are subject to the availability of funds.

(b) EDA will endeavor to notify applicants as soon as practicable regarding whether their applications are selected for funding.

(c) Stevenson-Wydler does not require nor does EDA provide an appeal process for denial of applications for EDA investment assistance.

§ 312.12 General terms and conditions for investment assistance.

RIS Program grants are subject to all requirements contained in part 302 of this chapter, except §§ 302.2, 302.3, 302.9, and 302.10.

Subpart C – Regional Innovation Research and Information Program

§§ 312.13 through 312.17 [Reserved]

Dated: September 6, 2016.

Roy K.J. Williams

Assistant Secretary for Economic Development

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